

**Editor's note: Appealed -- aff'd, Civ. No. 76-602V (W.D. Wash. May 9, 1978); reversed, No. 78-2880 (9th Cir. Jan. 7, 1982) 664 F.2d 1380**

LAVONNE E. GREWELL

IBLA 75-577

Decided January 6, 1976

Appeal from summary rejection of appeal of homesite application F-034663 by the Fairbanks District Office, Bureau of Land Management.  
Dismissed.

1. Rules of Practice: Appeals: Dismissal

A notice of appeal to the Board of Land Appeals must be dismissed where it is not timely filed within the ambit of 43 CFR 4.411(a), and 43 CFR 4.401, since the requirement of timely filing is jurisdictional.

APPEARANCES: Joseph W. Sheehan, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from an action by the Fairbanks District Office, Bureau of Land Management (BLM), refusing to entertain an appeal from a decision closing homesite entry F-034663, because the appeal was filed more than 30 days after the decision canceling the homesite entry.

Appellant located a homesite claim on July 18, 1965. The location was duly recorded. On Monday morning, July 20, 1970, she timely filed application to purchase.

BLM conducted a field examination to verify the assertions made by the appellant in the purchase application. The report, dated November 1, 1971, was adverse. Subsequently, by a complaint dated August 6, 1974, BLM initiated a contest against the entry charging, in the main, that appellant had failed to reside on the claim or to construct a habitable house as required by the Homesite Act, as amended, 43 U.S.C. § 687a (1970). The complaint was dispatched by mail at appellant's last known address. It was returned by the post office as unclaimed and unforwardable. More than 30 days later, on October 15, 1974, the District Office

rendered decision that service had been duly made in accordance with pertinent regulations, 43 CFR 4.422(c)(3) and 4.450-5, and no answer having been filed, the charges were taken as confessed. The claim was canceled. 43 CFR 4.450-6 and 4.450-7. An appeal from the cancellation embodied in the decision of October 15, 1974, was filed on March 26, 1975, long beyond the 30-day period permitted by the rules of practice, 43 CFR 4.411. The District Office summarily dismissed the appeal because it was not timely filed. This appeal resulted.

[1] The 30-day period in which a person aggrieved by a decision may file an appeal is jurisdictional, and the regulations require summary dismissal of an appeal which is not timely filed. 43 CFR 4.411. See Pressentin v. Seaton, 284 F.2d 195 (D.C. Cir. 1960). This Board has recognized explicitly that the timely filing of a notice of appeal is jurisdictional, and failure to file the appeal timely mandates its dismissal. Elbert F. Howey, 15 IBLA 208 (1974); Estate of Louis W. Knudsen, 10 IBLA 329 (1973).

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the appeal is dismissed.

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Frederick Fishman  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

